

## University of Miami Law School Institutional Repository

---

University of Miami Inter-American Law Review

---

10-1-2012

# Standing Up Against Corruption: An Analysis on the Matter of N-M- and Corruption in the Americas

Summer E. Niemeier

Follow this and additional works at: <http://repository.law.miami.edu/umialr>



Part of the [Immigration Law Commons](#)

---

### Recommended Citation

Summer E. Niemeier, *Standing Up Against Corruption: An Analysis on the Matter of N-M- and Corruption in the Americas*, 44 U. Miami Inter-Am. L. Rev. 89 (2012)

Available at: <http://repository.law.miami.edu/umialr/vol44/iss1/6>

This Student Note/Comment is brought to you for free and open access by Institutional Repository. It has been accepted for inclusion in University of Miami Inter-American Law Review by an authorized administrator of Institutional Repository. For more information, please contact [library@law.miami.edu](mailto:library@law.miami.edu).

# **Standing Up Against Corruption: An Analysis on the Matter of N-M- and Corruption in the Americas**

Summer E. Niemeier<sup>1</sup>

I. INTRODUCTION .....	89	
II. PERSPECTIVE: .....	91	R
A. <i>Asylum Law in the United States: A Brief         Introduction</i> .....	91	R
B. <i>Jurisdictions and Precedent in Immigration         Law</i> .....	93	R
C. <i>Prior BIA Decisions: Anti-corruption and         Whistleblowing are not Political Opinions</i> .....	94	R
D. <i>Prior Circuit Court Decisions</i> .....	94	R
III. THE BOARD OF IMMIGRATION APPEALS DECISION IN MATTER OF N-M- .....	98	R
IV. ANALYSIS .....	101	R
A. <i>Short-Comings in the Matter of N-M-</i> .....	101	R
B. <i>New Decisions</i> .....	104	R
C. <i>Corruption in the Americas</i> .....	106	R
D. <i>Impact on the Eleventh Circuit</i> .....	110	R
V. CONCLUSION .....	111	R

## I. INTRODUCTION

*“Any person in Government Service should . . . [p]ut loyalty  
to the highest moral principles and to country above loyalty  
to persons, party, or Government department,” and shall  
“[e]xpose corruption wherever discovered.”*

– United States House of Representatives<sup>2</sup>

Corruption is a major problem confronting governments throughout the world. It serves as “a barrier” to the world economic market.<sup>3</sup> This malevolence is especially prevalent in the Americas, where half of the countries score in the bottom half of

---

1. J.D., summa cum laude, University of Miami School of Law, 2013. In law school, Summer worked with the Immigration Clinic and is currently clerking for the U.S. District Court for the Southern District of Indiana.

2. Code of Ethics for Government Service, H.R. Con. Res. 175, 85th Cong., 2d Sess., 72 § B12. (1958) (adopted).

3. <http://www.state.gov/p/in/rls/172267.htm>

## 90 INTER-AMERICAN LAW REVIEW [Vol. 44:1]

the corruption index.<sup>4</sup> Further, the U. S. Department of State's Human Rights Reports cite corruption as a major problem facing nearly all of the countries in the Western Hemisphere south of the United States.<sup>5</sup>

The United States, along with the nations listed in note 4 as amongst the more corrupt nations, are signatories to the Convention Against Corruption. The signatories to the convention advocate and pledge their support to anticorruption measures worldwide.<sup>6</sup> While this treaty is a laudable cause, the United States has fallen short in protecting those individuals living under corrupt governments who voice their opposition to such corruption through whistleblowing and other anticorruption activities. The Managing Director at Transparency International, a non-governmental organization that monitors and publicizes corporate and political corruption in international development, Cobus de Swardt, stated:

We also have to make sure that individuals who lead by example are not left to lead alone. . . . Russian whistleblower Sergei Magnitsky, paid too high a price for exposing corruption when he died in prison. The search for justice in that case goes on, as will our efforts to secure greater protection for whistleblowers around the world.<sup>7</sup>

Similarly, the United States and the various nation-signatories to the Refugee Convention offer asylum to those persecuted on account of their race, religion, national origin, social group, or political opinion. The United States, through its immigration courts, regulations, and statutes, redefine how narrow or broad each asylum ground will be applied. By example, for the focus of this article, opposition to government corruption and whistleblowing had not received nationwide recognition as a ground for politi-

---

4. TRANSPARENCY INTERNATIONAL, ANNUAL REPORT 2010, *available at* [http://www.transparency.org/publications/annual\\_report](http://www.transparency.org/publications/annual_report). The report ranks countries from 1 to 178. The following countries rank in the bottom half: Guatemala, Mexico, Dominican Republic, Argentina, Bolivia, Guyana, Ecuador, Nicaragua, Honduras, Haiti, Paraguay, and Venezuela.

5. Links to the STATE DEPARTMENT HUMAN RIGHTS REPORT FOR THE WESTERN HEMISPHERE FOR 2010, *available at* <http://www.state.gov/g/drl/rls/hrrpt/2010/wha/index.htm>. Various forms of corruption in the opening paragraphs for the nations of: Argentina, Bolivia, Brazil, Colombia, Cuba, Dominican Republic, Ecuador, El Salvador, Grenada, Guatemala, Guyana, Haiti, Honduras, Mexico, Nicaragua, Panama, Paraguay, Peru, St. Lucia, Suriname, and Venezuela.

6. *See generally* The Convention Against Corruption, Dec. 9, 2003, *available at* [http://www.unodc.org/documents/treaties/UNCAC/Publications/Convention/08-50026\\_E.pdf](http://www.unodc.org/documents/treaties/UNCAC/Publications/Convention/08-50026_E.pdf).

7. ANNUAL REPORT 2010, *supra* note 4.

## 2012]     STANDING UP AGAINST CORRUPTION     91

cal asylum in the United States until June 9, 2011. On that date, the Board of Immigration Appeals (“BIA”) held, in a precedential opinion in the *Matter of N-M-*, that opposition to government corruption and whistleblowing can be the basis for a political asylum claim.<sup>8</sup>

The *Matter of N-M-* is a great advancement for asylum seekers; however, this article will analyze the limited effect this decision may ultimately have on them. Section I will survey asylum law in the United States and the precedential effects of decisions from the Board of Immigration Appeals (“BIA”) and Circuit Courts of Appeals. Section II will explore the developing recognition of these claims in prior decisions by the BIA and United States Circuit Courts. Section III discusses the BIA’s decision and reasoning in *Matter of N-M-*. In Section IV, this article will analyze the shortcomings of the decision by evaluating its reasoning and the two cases decided after it. Finally, in Section V, this note will discuss the implications that such shortcomings may have on the Americas, particularly on Haiti, Guatemala, Nicaragua, Honduras, and Mexico.

## II. PRIOR LAW AND PERSPECTIVE

### A. *Asylum in the United States*

Asylum in the United States is based primarily on the 1951 Convention relating to the Status of Refugees and the Protocol relating to the Status of Refugees. The Refugee Convention defines a refugee as a person who:

owing to a well-founded fear of being persecuted for reasons of race, religion, nationality, membership of a particular social group or political opinion, is outside the country of his nationality and is unable or, owing to such fear, is unwilling to avail himself of the protection of that country; or who, not having a nationality and being outside the country of his former habitual residence as a result of such events, is unable or, owing to such fear, is unwilling to return to it.<sup>9</sup>

The United States adopted language very close with limits on the number of beneficiaries. In 1996, the United States added political opinion as a ground for asylum with unlimited beneficiaries. The U.S. statute reads:

---

8. *Matter of N-M-*, 25 I. & N. Dec. 526 (BIA 2011).

9. U.N. Refugee Convention, *supra* note 6, at Art. 1A(2).

## 92 INTER-AMERICAN LAW REVIEW [Vol. 44:1]

any person who is outside any country of such person's nationality or, in the case of a person having no nationality, is outside any country in which such person last habitually resided, and who is unable or unwilling to return to, and is unable or unwilling to avail himself or herself of the protection of, that country because of persecution or a well-founded fear of persecution on account of race, religion, nationality, membership in a particular social group, or political opinion.<sup>10</sup>

To qualify for asylum, the applicant must show that he or she fears persecution and that the persecution is due to one of the five protected grounds: race, religion, nationality, membership in a particular social group, or political opinion.<sup>11</sup> This is known as the nexus requirement, which changed in 2005 with the passage of the REAL ID Act.<sup>12</sup> When read with the United States Supreme Court's decision *I.N.S. v. Elias-Zacarias*,<sup>13</sup> the REAL ID Act requires that the asylum officer or immigration judge determine that the protected ground was "one central reason" for persecution, but does not require the protected ground to be the only reason.<sup>14</sup>

When the protected ground is political opinion, the statute technically only requires that the person has the political opinion or that the persecutors will impute that opinion to the person. People "are protected from persecution for simply *having* a political opinion. Expression of the opinion or taking action based upon it is not required."<sup>15</sup> Nevertheless, courts look to the immigrants' expressions to determine if he or she truly held a political opinion and that the alleged persecutor knew of the opinion in order to persecute the applicant on account of that opinion.<sup>16</sup> Thus, the expressions of the alleged political opinion become the main focus of these cases.

---

10. 8 U.S.C. § 1101(a)(42)(A) (2013); *See also* Asylum Officer Basic Training Course, History of the Affirmative Asylum Program 8 (Jan. 9, 2006).

11. *See* 8 U.S.C. § 1101(a)(42)(A) (2013).

12. Pub. L. No. 109-13, 119 Stat. 231 (2005).

13. *See generally* *I.N.S. v. Elias-Zacarias*, 502 U.S. 478 (1992).

14. *See* H.R. Rep. No. 109-72, at 165 (2005) (Conf. Rep.) ("[U]nder this amendment, asylum may be granted where there is more than one motive for mistreatment, as long as at least one central reason for the mistreatment is on account of race, religion, nationality, membership in a particular social group, or political opinion. . . .").

15. DEBORAH E. ANKER, *LAW OF ASYLUM IN THE UNITED STATES*, § 5:17 (2012).

16. *See, e.g.,* *Saldarriaga v. Gonzales*, 402 F.3d 463, 466 (4th Cir. 2005).

*B. Jurisdiction in the Immigration Context*

Asylum in the United States is a discretionary measure.<sup>17</sup> There are two paths to asylum: affirmative asylum and defensive asylum.<sup>18</sup> Affirmative asylum applicants are those present in the United States and that have not been placed in removal proceedings.<sup>19</sup> There is a one-year bar to those applying for affirmative asylum.<sup>20</sup> After the applicant submits his or her application, he or she will have an interview with an asylum officer who will make a decision whether to grant the application or refer the application to an Immigration Judge.<sup>21</sup> If the asylum officer grants the petition, then the person has received asylum and is granted legal status in the United States.<sup>22</sup>

Immigrants who have been placed in removal proceedings may apply defensively to prevent their removal, which is decided by an Immigration Judge, a member of the Executive Office of Immigration Review (“EOIR”), in an adversarial setting.<sup>23</sup> Additionally, those applications not approved in the affirmative processing will also be sent before an Immigration Judge.<sup>24</sup> After a decision is made, an applicant or the government may choose to appeal the decision to the BIA.<sup>25</sup>

The BIA is required to be consistent with statutes and regulations.<sup>26</sup> The BIA decisions are binding on all Immigration

---

17. 8 U.S.C.A. § 1158(a)(1) (2009).

18. Obtaining Asylum in the United States, U.S. CITIZENSHIP AND IMMIGRATION SERVICES, *available at* <http://www.uscis.gov/portal/site/uscis/menuitem.5af9bb95919f35e66f614176543f6d1a/?vgnnextoid=dab9f067e3183210VgnVCM100000082ca60aRCRD&vgnnextchannel=f39d3e4d77d73210VgnVCM100000082ca60aRCRD> [hereinafter Obtaining Asylum].

19. *Id.*

20. 8 U.S.C. § 1158(a)(2)(B) (2009).

21. The Affirmative Asylum Process, U.S. CITIZENSHIP AND IMMIGRATION SERVICES, *available at* <http://www.uscis.gov/portal/site/uscis/menuitem.5af9bb95919f35e66f614176543f6d1a/?vgnnextoid=888e18a1f8b73210VgnVCM100000082ca60aRCRD&vgnnextchannel=f39d3e4d77d73210VgnVCM100000082ca60aRCRD>.

22. *Id.*

23. Obtaining Asylum, *supra* note 18.

24. *Id.*

25. 8 C.F.R. §1240.15 (2001).

26. *See* Matter of Anselmo, 20 I. & N. Dec. 25, 30 (BIA 1989).

Judges,<sup>27</sup> unless one of the federal Courts of Appeals overrules it;<sup>28</sup> if this happens, then the BIA's decision is binding on all Immigration Judges sitting in circuits that have not overruled the BIA decision. The BIA decision is appealable to the Circuit Court for issues of law and fact.<sup>29</sup>

### C. Board of Immigration Appeals Decisions

In 2000, the BIA held that whistleblowing did not constitute a political expression and was not a political belief for reasons of asylum law.<sup>30</sup>

### D. Circuit Court Decisions

Several circuit courts have found whistleblowing and anticorruption constitute a political expression for purposes of a political opinion. A year after the asylum statute was amended to include unlimited beneficiaries for political opinion asylum, the Ninth Circuit, in *Marquez v. I.N.S.*, discussed the implications of asylum based on corruption.<sup>31</sup> The former Immigration and Naturalization Services ("INS") argued "generalized conditions of corruption in a country are very much like civil strife, which cannot justify asylum for all its victims."<sup>32</sup> The Court agreed with this argument but also stated that "[w]idespread corruption may not be a ground for asylum, but political agitation against state corruption might well be."<sup>33</sup>

That dicta became the basis on which the Ninth Circuit over-

---

27. 8 C.F.R. § 1003.1(g)(2009) ("Decisions as precedents. Except as Board decisions may be modified or overruled by the Board or the Attorney General, decisions of the Board, and decisions of the Attorney General, shall be binding on all officers and employees of the Department of Homeland Security or immigration judges in the administration of the immigration laws of the United States. By majority vote of the permanent Board members, selected decisions of the Board rendered by a three-member panel or by the Board en banc may be designated to serve as precedents in all proceedings involving the same issue or issues. Selected decisions designated by the Board, decisions of the Attorney General, and decisions of the Secretary of Homeland Security to the extent authorized in paragraph (i) of this section, shall serve as precedents in all proceedings involving the same issue or issues.").

28. 8 U.S.C. § 1252(b)(2) (2005). (IIRIA moved review of all immigration claims to the federal circuit courts of appeals.); See 8 U.S.C. § 1105a(b) (2006), *repealed by* IIRIA. (Prior, to IIRIA, federal district courts heard appeals from the BIA.).

29. See 8 C.F.R. § 1003.1(1) (2009). See also 8 U.S.C. § 1252(a)(5) (2005).

30. *Grava v. I.N.S.*, 205 F.3d 1177, 1181 (9th Cir. 2000).

31. *Marquez v. I.N.S.*, 105 F.3d 374, 381 (7th Cir. 1997).

32. *Id.* (noting that every victim of corruption can qualify for political asylum, then "several billion human beings" might be eligible for asylum).

33. *Id.*

## 2012]     STANDING UP AGAINST CORRUPTION     95

ruled the BIA in 2000 in *Grava v. I.N.S.*<sup>34</sup> On appeal, the BIA held “whistleblowing does not constitute an expression of political opinion.”<sup>35</sup> The Ninth Circuit, disagreeing, stated broadly that “[w]hen the alleged corruption is inextricably intertwined with governmental operation, the exposure and prosecution of such an abuse of public trust is necessarily political.”<sup>36</sup> The Court noted that retaliation alone does not qualify an individual for asylum, but that retaliation does not “render the opposition any less political or any less deserving of asylum.”<sup>37</sup> *Grava* established a test for the Ninth Circuit’s holding that whistleblowing was protected as a political opinion when “the actions were directed toward a governing institution,” as opposed to “only against individuals whose corruption was aberrational.”<sup>38</sup>

The Sixth Circuit, in its 2004 decision *Marku v. Ashcroft*,<sup>39</sup> is cited for noting that opposition to government corruption can constitute a political opinion under particular circumstances.<sup>40</sup> The court in *Marku* stated other circuits’ holdings that opposition to government corruption is a political opinion, but the court did not say if it found those authorities persuasive.<sup>41</sup> The Sixth Circuit did not elaborate on those circumstances that could qualify opposition to government corruption as a political opinion, because it found that Marku did not present evidence she was persecuted on account of her political opinion.<sup>42</sup> She did not prove that she stood up against corruption or did anything to express her political views. She may have held anticorruption beliefs, but her persecutor did not perceive her actions to be politically or ideologically motivated.

The next circuit court to hold that opposition to government corruption could be a political opinion for asylum purposes was the Second Circuit’s 2005 opinion in *Zhang v. Gonzales*.<sup>43</sup> Justice Sotomayor wrote, “[O]pposition to endemic corruption or extortion, no less than opposition to other government practices or policies, may have a political dimension when it transcends mere self-protection and represents a challenge to the legitimacy or author-

---

34. *Grava*, 205 F.3d 1177, 1181

35. *Id.*

36. *Id.*

37. *Id.* at 1181, n. 3.

38. *Id.* at 1181.

39. See *Marku v. Ashcroft*, 380 F.3d 982 (6th Cir. 2004).

40. See, e.g., *Zhang v. Gonzales*, 426 F.3d 540, 548 (2d Cir. 2005).

41. *Marku*, 380 F.3d at 988.

42. *Id.* at 989.

43. *Zhang*, 426 F.3d at 547.



ity of the ruling regime.”<sup>44</sup> For this premise, she cited decisions from the Ninth, Sixth, and Seventh Circuit Courts.<sup>45</sup> Sotomayor clarified what circumstances should be considered in finding that an applicant for asylum was persecuted or will be persecuted. She stated that “the persecutor’s motive need not be *solely* to overcome the applicant’s political opinion.”<sup>46</sup> In evaluating political asylum claims based on opposition to governmental corruption it is more important to look at whom the applicant directed his or her actions.<sup>47</sup> A stronger claim is made when the applicant directed her opposition to governmental corruption towards a governing institution rather than a rogue individual.<sup>48</sup>

The Seventh Circuit later clarified the factors and limitations to granting asylum based upon opposition to government corruption in *Haxhiu v. Mukasey*<sup>49</sup> and *Darwich v. Holder*.<sup>50</sup> The Seventh Circuit held that “to qualify for relief, a whistleblower must seek a political result by publicly exposing corruption.”<sup>51</sup> Thus, the subjective motive of the applicant must be twofold: the immigrant must seek a “political result” and must be against governmental corruption. In addition, the applicant must publicly expose the corruption. The *Darwich* court elaborated that “simply alerting police of suspected crime is a far cry from forming an anti-corruption party or speaking out as a public gadfly against political corruption.”<sup>52</sup> The Seventh Circuit previously held that if the applicant’s job was to fight against government corruption, the applicant will not be barred from obtaining asylum based on the persecution from this campaign.<sup>53</sup>

In 2006, the Eleventh Circuit delivered an opinion that Dorisme was not persecuted because of his political opinion.<sup>54</sup> Dorisme was a Haitian police officer who reported corruption to his supervisor and arrested corrupt officers.<sup>55</sup> Upon doing this, he

---

44. *Id.* at 547-548.

45. *Id.* at 548 (citing *Marku*, 380 F.3d at 986; *Hasan v. Ashcroft*, 380 F.3d 1114, 1120 (9th Cir. 2004); *Marquez*, 105 F.3d at 381; *Desir v. Ilchert*, 840 F.2d 723, 727 (9th Cir. 1988)).

46. *Id.* at 548.

47. *Id.*

48. *Id.*

49. See *Haxhiu v. Mukasey*, 519 F.3d 685 (7th Cir. 2008).

50. See *Darwich v. Holder*, 300 F. App’x 596 (7th Cir. 2009).

51. *Darwich*, 330 F. App’x, at 601.

52. *Id.*

53. *Id.*

54. *Dorisme v. U.S. Att’y Gen.*, 203 F. App’x 945, 948 (11th Cir. 2006).

55. *Id.* at 945.

## 2012]     STANDING UP AGAINST CORRUPTION     97

was reprimanded by the police chief “for making arrests outside of his jurisdiction.”<sup>56</sup> When leaving the police station, Dorisme saw one of the men he arrested outside.<sup>57</sup> Three or four men attacked Dorisme, who sustained injuries requiring hospitalization.<sup>58</sup> He then began receiving threats from anonymous callers telling him that he would not have a second chance.<sup>59</sup> The Immigration Judge found that Dorisme, by refusing to join in with police corruption, had not voiced a political opinion. Dorisme simply did his job “without regard to political considerations . . . the threats and intimidations Dorisme suffered were the result of his harassers’ political opinions, not his own.”<sup>60</sup> The Eleventh Circuit affirmed the BIA in stating that Dorisme was “targeted because of his moral stance, not his political one.”<sup>61</sup> Additionally, the Eleventh Circuit did not adopt decisions, like *Zhang*, which held that opposition to government corruption was a political opinion.<sup>62</sup>

The court concludes that Dorisme failed to consider the specifics of his acts against other police officers. The Eleventh Circuit stated that he merely refused to cooperate by arresting corrupt police officers as a fellow officer.<sup>63</sup> The Immigration Judge stated that “the Haitian government and the National Police were extremely corrupt, without regard to political opinion.”<sup>64</sup> This statement is problematic for three reasons: First, it is the victim’s political opinion that is relevant to the inquiry, not the persecutors’. Second, the corruption was therefore not of some “aberrational” individuals and would thus satisfy the test in *Grava*. Third, the Court does not consider the possibility of whistleblowing as an expression of a political opinion, but rather brushes these actions aside as a moral action.

The Ninth Circuit rejected the Eleventh Circuit’s opinion in *Castro v. Holder* and found that whistleblowing concerning governmental corruption in a nation plagued by corruption did constitute a political opinion:

The government argue[d] that simply having an affinity for the rule of law and being against corruption is not a politi-

---

56. *Id.* at 946.

57. *Id.*

58. *Id.*

59. *Id.*

60. Dorisme v. U.S. Att’y Gen., 203 F. App’x 945, 947 (11th Cir. 2006).

61. *Id.* at 948.

62. *Id.* at 948-949.

63. *Id.* at 949.

64. *Id.* at 946.

cal opinion. While that may be true in a stable country governed by the rule of law, in certain contexts, opposition to endemic corruption is precisely a political opinion, and retaliation for expressing such an opinion may constitute political persecution.<sup>65</sup>

The Court also dismissed the finding that the nexus requirement was not met because the corrupt officers were retaliating and not persecuting based on the applicant's political stance against corruption.<sup>66</sup> The Court affirmed that asylum may be granted when the alleged persecutor had mixed motives.<sup>67</sup>

When the *Matter of N-M-* was decided, the majority of Circuits had found that opposition to corruption could constitute a political opinion. Whistleblowing as a form of expression for the opposition to government corruption had not been recognized as frequently. The BIA changed this in the *Matter of N-M-*.

### III. THE MATTER OF N-M-

N-M- fled from Colombia in 2004, at a time when the country suffered from endemic corruption and graft in both the public and private sectors.<sup>68</sup> N-M- worked for thirteen years in administrative positions with a state-run agency in Colombia.<sup>69</sup> In the last six years of her employment (1998-2004), she faced pressure to circumvent the required hiring process and to falsify statistical information.<sup>70</sup> N-M- refused.<sup>71</sup> Thereafter, she was overworked and forced to transfer to another division.<sup>72</sup> In the new division, she continued to voice her concerns to the internal audit department of the agency regarding this behavior.<sup>73</sup> She further refused to certify payment for uncompleted work.<sup>74</sup>

From December 2003 to May 2004, N-M- received threatening phone calls from anonymous callers threatening to kill her and her son if she did not leave.<sup>75</sup> The callers warned her not to call the police.<sup>76</sup> In June 2004, she and her son left for the United

---

65. *Castro v. Holder*, 597 F.3d 93, 106 (2d Cir. 2010).

66. *Id.* at 96.

67. *Id.* at 104.

68. *Matter of N-M-*, 25 I. & N. Dec. 526 (BIA 2011).

69. *Id.* at 528.

70. *Id.*

71. *Id.*

72. *Id.*

73. *Id.* at 527.

74. *Matter of N-M-*, 25 I. & N. Dec. 526, 527 (BIA 2011).

75. *Id.* at 527-528.

76. *Id.* at 528.

## 2012]     STANDING UP AGAINST CORRUPTION     99

States.<sup>77</sup> Her son returned to Colombia and his life was again threatened, as well as his mother's if she returned to Colombia.<sup>78</sup>

On July 7, 2009, an Immigration Judge granted N-M-'s application for asylum and withholding.<sup>79</sup> *Matter of N-M-* is the BIA's decision from a Department of Homeland Security appeal.<sup>80</sup> The Immigration Judge concluded that her actions while working in the agency constituted a political opinion.<sup>81</sup> The BIA assumed the accuracy of this conclusion, but found that the "one central reason" nexus was not met because the judge did not determine the motive of these phone calls.<sup>82</sup> Thus, the BIA remanded the case for further fact-finding.<sup>83</sup>

The BIA's decision, however, is of great importance to political asylum claims because of the analysis and directions given within the BIA's reasoning. The decision has two holdings. The first reversed prior BIA case law and now makes the decisions of many circuit courts binding throughout the United States. The Court initially held that "in some circumstances, opposition to state corruption may provide evidence of an alien's political opinion or give a persecutor reason to impute such beliefs to an alien."<sup>84</sup> Second, the BIA held that under the REAL ID Act of 2005, an applicant must do more than show retaliation for opposing government corruption. The applicant must also show that his actual or imputed political belief was one central reason for the harm.<sup>85</sup>

The BIA clarified both holdings through examples and directions to Immigration Judges. Elaborating on the first holding, the BIA stated that campaigning through traditional political activities is one way to show the expression of a political opinion whether actual or imputed.<sup>86</sup> Examples of such activities are: "founding or being active in a political party that opposes state corruption, attending or speaking in political rallies on the issue of eradicating state corruption, or writing or distributing political materials criticizing state corruption."<sup>87</sup> The BIA also noted that

---

77. *Id.*

78. *Id.*

79. *Id.* at 526.

80. *Matter of N-M-*, 25 I. & N. Dec. 525 (BIA 2011).

81. *Id.* at 526.

82. *Id.*

83. *Id.* at 534.

84. *Id.* at 529.

85. *Id.* at 529.

86. *Matter of N-M-*, 25 I. & N. Dec. 526, 529 (BIA 2011).

87. *Id.*

“exposing or threatening to expose government corruption to higher government authorities, the media, or nongovernmental watchdog organizations could constitute the expression of a political opinion.”<sup>88</sup> The BIA noted that the applicant may take anticorruption actions that are motivated by nonpolitical reasons, such as fear of punishment or financial gain.<sup>89</sup> Additionally, whistleblowing may be motivated by personal revenge or animus toward a supervisor.<sup>90</sup>

Even if the applicant has a political opinion, the REAL ID Act of 2005 and the Supreme Court’s decision in *Elias-Zacarias* require that the applicant show that this political opinion is “one central reason” for the alleged persecution.<sup>91</sup> The applicant must demonstrate that the persecutor’s motive arises from the political belief.<sup>92</sup> An inquiry into the individual persecutor’s motive is necessary through either direct or circumstantial evidence.<sup>93</sup> The BIA rejected the idea that “a demonstration of retaliation for acting against governmental corruption is sufficient to establish that the harm occurred on account of the alien’s political opinion,”<sup>94</sup> because it fails to consider those who are not acting because of anticorruption beliefs but out of personal revenge or to avoid exposure of the overall corrupt scheme.

To determine the motive of the alleged persecutor, the BIA noted three factors for immigration judges to consider: (1) “whether and to what extent the alien engaged” in expressions of anticorruption beliefs; (2) “direct or circumstantial evidence that the alleged persecutor was motivated by;” and (3) “the pervasiveness of government corruption, as well as whether there are direct ties between the corrupt elements and higher level officials.”<sup>95</sup> The first factor requires the immigration judge to look for expressions of the political opinion that the persecutor would be aware of. The second factor, arguably the most difficult to prove, cites case examples where the government or official openly accused the alien of taking actions against it. In looking at the third factor, the immigration judge should consider whether the governing regime as opposed to the corrupt individual is retaliating. Stand-

---

88. *Id.* at 528.

89. *See id.* at n. 1.

90. *Id.*

91. *Elias-Zacarias*, 502 U.S. at 482.

92. *Id.*

93. *Id.*

94. *See Matter of N-M-*, 25 I. & N. Dec. at 531.

95. *Id.*

## 2012]     STANDING UP AGAINST CORRUPTION     101

ing up against a rogue official may not be seen as opposition to the governing regime.

In returning to the case before it, the BIA concluded that the Immigration Judge's conclusion that the phone calls were made on account of her actions against corruption was not clearly erroneous although it acknowledged DHS's concern that the identity of the callers remains unknown.<sup>96</sup> The Immigration Judge failed to determine the motive for these calls even though they were triggered by N-M's actions. Following these findings, the BIA sustained the appeal and remanded for further fact-finding.<sup>97</sup>

#### IV. ANALYSIS

##### A. *Short-Comings in the Matter of N-M-*

The BIA's decision limits what actions count as anticorruption or whistleblowing against corrupt officials. The limitation begins with the BIA's definition of political. The BIA relies on *Zhang* and the definition of political in Black's Law Dictionary defining "political" as "pertaining to politics; of or relating to the conduct of government."<sup>98</sup> This definition appears to reflect the colloquial usage of "political" as exhibited by the Merriam-Webster dictionary. Its first definition of "political" states "of or relating to government, a government, or the conduct of government."<sup>99</sup> However, one may find it surprising that reporting corrupt government officials or refusing to participate in a corrupt administrative process does not qualify as a political activity. These individuals are reporting on or refusing to do something that "relates to the conduct of government." The US State Department categorizes bribes for routine services or in place of fines, and the overpayment for goods and services in order to give money to elected officials and political parties, as corruption.<sup>100</sup>

In *Matter of N-M-*, the BIA reluctantly acknowledged the second half of the definition of "political" in Black's Law Dictionary ("of or relating to the conduct of government"). This is evident in the examples given by the BIA of when opposition to state corrup-

---

96. *Id.*

97. *Id.*

98. *Id.* at 529.

99. MERRIAM-WEBSTER DICTIONARY ONLINE, <http://www.merriam-webster.com/dictionary/political> (last visited April 7, 2013).

100. 2010 Human Rights Reports: Mexico, BUREAU OF DEMOCRACY, HUMAN RIGHTS, AND LABOR, (April 8, 2011), <http://www.state.gov/g/drl/rls/hrrpt/2010/wha/154512.htm>. [hereinafter Mexico].

tion may qualify as political. The BIA lists “classical political activities” as examples of what “would likely” qualify as the expression of a political opinion against state corruption.<sup>101</sup> This statement is both self-evident and too limiting. In many nations, particularly where corruption is a problem in the governing institutions, there is little ability to expose corruption to this extent or to express opposing political beliefs.

The BIA, perhaps in recognizing that the classical activities are too restrictive, stated that “it is also possible that exposing or threatening to expose government corruption to higher government authorities, the media, or nongovernmental watchdog organizations could constitute the expression of a political opinion.”<sup>102</sup> The BIA noted that this action may be done for nonpolitical reasons or “reasons other than a genuine concern for the practices of good government.”<sup>103</sup> Once again this fails to recognize the second half of the definition of “political.” What the asylum petitioner is alleging he or she has complained about is, in itself, a political statement. The definition of political does not require a concern for good government, but simply that the activity or opinion has something to do with government.

The examples of what actions may constitute the expression of a political opinion or an imputed political opinion causes further complications for those standing up against corruption. The examples limit future applicants in two ways. First, it now appears that the applicant must do or participate in an expression of the political belief. The statute, however, does not require an expression of political opinion to qualify for asylum, but only a political opinion or imputed opinion. While expression of a political opinion is useful for evidentiary purposes, it is not required by the statute as the BIA suggests here.

In order to determine if the applicant has met the nexus requirement for asylum cases involving whistleblowing and/or opposition to state corruption, the BIA explains that “corrupt officials who act solely out of personal revenge or a desire to avoid the exposure of a lucrative scheme of corruption” without regard to the petitioner’s political beliefs would not meet the nexus requirements.<sup>104</sup> Once again, the BIA narrows its definition of “political” when it states this and cites its 2010 decision, *Matter of C-T-L*,

---

101. *Matter of N-M-*, 25 I. & N. Dec. at 529.

102. *Id.*

103. *Id.* at 535, n. 1.

104. *Id.* at 531.

## 2012]     STANDING UP AGAINST CORRUPTION     103

where a former employee of a police officer and businessman reported the officer's blackmailing scheme and appeared on television to expose the wrongdoings.<sup>105</sup> The BIA found that the police officers retaliated against the petitioner because he interfered with their private money-making scheme and not because he held a political opinion.<sup>106</sup> Under this logic, one could argue that only political beliefs in regard to a political party or governing system are the only beliefs that qualify for political asylum. One could also find that the petitioner in *Matter of C-T-L*, met at least two of the three factors listed in *Matter of N-M-* to determine if a nexus existed.<sup>107</sup>

The BIA gives Immigration Judges three considerations to follow. The first of the factors is clearly relevant to the inquiry. The BIA cited to *Marku*, which found no nexus because the anticorruption beliefs were not expressed to the alleged persecutor.<sup>108</sup> The considerations for an Immigration Judge in determining if the activities could be perceived as anticorruption beliefs are both straightforward and easy to understand. Nevertheless, the BIA should have included a reminder in the opinion to the judges that not all of these activities are possible for individuals living in nations with the most egregious human rights violations.

The second factor to be considered by an Immigration Judge also appears to be a straight-forward application to meet the nexus requirement. However, the likelihood that a government or agency of the government would use public means to target those who bravely stand up against corruption on their own appears small. This hinders the ability of those most invested in ferreting out governmental corruption to file a successful asylum case. The allowance of circumstantial evidence is helpful to these lone individuals. For example, accounts of threats from the persecutors are

---

105. *Matter of C-T-L*, 25 I. & N. Dec. 341, 342 (BIA 2010).

106. *Id.* at 349.

107. *See Matter of N-M-*, 25 I. & N. Dec. at 530-531. The petitioner could satisfy the first of the factors listed because he publicly denounced corruption in the police department by going on television and caused the police officer to be suspended for two months. Although it was not a frequent occurrence, it was very likely that the police officer knew of these activities. The petitioner also may meet the third factor – the pervasiveness of government corruption; *2010 Human Rights Report: Brazil*, BUREAU OF DEMOCRACY, HUMAN RIGHTS, AND LABOR, (April 8, 2011), <http://www.state.gov/documents/organization/160156.pdf> at 20. Although Brazil for 2010 does not fall in the lower half of nations on the Corruption Index, the US State Department reports note that “officials frequently engaged in corrupt practices with impunity. . . [and] corruption continued to be a severe problem.”

108. *See Matter of N-M-*, 25 I. & N. Dec. at 530.



helpful, but as *Matter of N-M-* exemplifies, the threat must shed some light on the motivation of the persecutor.<sup>109</sup> Thus, a threat to kill the person after the reporting of a corrupt act, but without an identification of the caller, may be insufficient to meet this factor. As applied in *N-M-*, the BIA found that “simply because the calls were triggered by the respondent’s actions, which obstructed the corrupt officials’ operations and threatened to expose them, does not necessarily mean that the callers were motivated by the respondent’s political opinion.”<sup>110</sup> The Immigration Judge did not determine if the callers “perceived the respondent to pose a political threat or merely a challenge to their personal scheme.”<sup>111</sup>

The third factor to consider is the pervasiveness of government corruption. According to the BIA, exposing corrupt acts of rogue officials acting without the support of the governing regime makes the act less likely to be perceived as politically motivated or politically threatening.<sup>112</sup> The relevancy of this factor to the nexus requirement is unclear other than to determine the likely motive of the persecutor. The factor also looks to identify the persecutor and whether he or she had the backing of the governing institution in order to find the motive of the persecutor. While, these certainly can shed some light on the motivation, this factor should not be conclusive on its own.

Thus, the principal decision is not as expansive as some wished. The BIA, by altering the definition of political and expanding upon the Immigration Judge’s inquiries to find a nexus, has limited the holding of the case to a few applicants. Those who stand up against corrupt officials and suffer from persecution may still not have the protection that they may deserve from political asylum in the United States.

### B. *New Decisions*

The Sixth Circuit<sup>113</sup> and the Ninth Circuit<sup>114</sup> are the only circuits to have decided a case concerning opposition to state corruption and whistleblowing since the BIA decided *Matter of N-M-*. In the Sixth Circuit’s decision, *Khakhnelidze v. Holder*, the applicant foiled a robbery attempt in Parliament and refused to take a

---

109. *Id.* at 531.

110. *Id.* at 534.

111. *Id.*

112. *Id.* at 533.

113. *See Khakhnelidze v. Holder*, 432 F. App’x 564 (6th Cir. 2011).

114. *See Lee v. Holder*, No. 10 71265, 464 F. App’x 657 (9th Cir. 2011).

## 2012]     STANDING UP AGAINST CORRUPTION     105

bribe.<sup>115</sup> He notified his supervisor that he knew it was an inside job because there was no other way for the robbers to know how to escape.<sup>116</sup> His supervisor informed him that the case was closed and then transferred him to the airport.<sup>117</sup> Later the applicant received threatening phone calls; additionally his son was kidnapped and beaten.<sup>118</sup> While unrepresented by counsel, the applicant failed to use the word “corruption” in his asylum application.<sup>119</sup> He never suggested that he acted because he was opposed to corruption, but rather stated that he “did the only thing any honest man would do.”<sup>120</sup> The Sixth Circuit found this to be definitive. The Sixth Circuit cited the list given by the BIA in *Matter of N-M-* as an exhaustive list as to what could constitute an expression of opposition to corruption.<sup>121</sup> The court noted “he never used the word corruption and he described none of the classic political activities suggestive of a campaign against government corruption.”<sup>122</sup> This reading of *Matter of N-M-* is harsher than prior opinions. The circuit courts previously did not require activities “suggestive of a campaign against government corruption,” but rather that the political expression is aimed at more than a rogue individual.

The Ninth Circuit upheld a denial of asylum in *Lee v. Holder*. The petitioner argued that he was persecuted on account of his political opinion because he exposed police corruption in a civil lawsuit in 2002.<sup>123</sup> The BIA found that the corrupt policemen involved constituted a small minority and thus would likely not “be perceived as opposition toward a governing institution.”<sup>124</sup> The police did not give a reason for the 2003 beating of the petitioner, although they did offer explanations for the two prior beatings.<sup>125</sup> The BIA concluded that because there were non-political reasons for the first two, the third beating could also be unmotivated by a political opinion.<sup>126</sup> The Court found that the petitioner “failed to

---

115. *Khakhnelidze*, 432 F. App’x at 566.

116. *Id.*

117. *Id.*

118. *Id.*

119. *Id.*

120. *Id.*

121. *Khakhnelidze*, 432 F. App’x at 571-576.

122. *Id.* at 572 (citing *Matter of N-M-*, 25 I. & N. Dec. 526 (BIA 2011)).

123. *Lee*, 432 F. App’x at 658.

124. *Id.* (quoting *Matter of NM* 25 I. & N. Dec. 526 (June 9, 2011)) (internal quotations omitted).

125. *Id.*

126. *Id.*

show an explicit connection between the beatings and his supposed political opinion” and upheld the BIA’s decision.<sup>127</sup>

Like the Sixth Circuit, the Ninth Circuit applied *Matter of N-M-* unfavorably to the petitioner. In a dissenting opinion in *Lee*, Judge Paez argued that the BIA only discussed one of the three factors listed in *Matter of N-M-*. The BIA, according to Judge Paez, only examined the extent of the petitioner’s involvement in activities that constitute an expression of the political belief and failed to examine the circumstantial evidence of what motivated the persecutor or the pervasiveness of the corruption.<sup>128</sup> By finding that the failure to meet only one factor results in non-protected political opinion, the Sixth Circuit has also read and applied *Matter of N-M-* too narrowly.

### C. *Corruption in the Americas*

This section focuses on the corruption problems facing five nations in the Americas: Haiti, Guatemala, Nicaragua, Honduras, and Mexico. Each of these countries ranks in the bottom half of nations included in the Corruption Index and have problems of corruption noted as a major human rights abuse by the U.S. State Department for 2010.<sup>129</sup> While detailing the problems of corruption facing each nation, this section will also examine the asylum rates associated with each country.<sup>130</sup> These rates are derived from the 2010 Asylum Statistics. In that year, 19,423 applications were reviewed, and approximately forty-nine percent were denied.<sup>131</sup> The denial rate for those applicants from the Americas, as discussed previously, is remarkably higher than other areas of the world.<sup>132</sup> In addition, the top ten countries by denial rates are all in the Americas, and all the nations in the Americas have a denial rate from fiscal year 2008 to fiscal year 2010 that surpasses the 2010 worldwide average denial rate.<sup>133</sup>

---

127. *Id.*

128. *Id.* at 659-660.

129. See Transparency International, Annual Report 2010, *supra* note 4.

130. There is no data available giving the ground for asylum claimed in each of the cases decided.

131. See FY 2010 Asylum Statistics, U.S. Department of Justice Executive Office of Immigration Review Office of Planning, Analysis, and Technology, available at <http://www.justice.gov/eoir/efoia/FY10AsyStats.pdf>. These numbers are a combination of the totals given for granted and denied. Percentages are taken by dividing the number of applications granted or denied by the total number of applications granted or denied.

132. *Id.*

133. See FY 2008 Asylum Statistics, U.S. Department of Justice Executive Office of

## 2012]     STANDING UP AGAINST CORRUPTION     107

Haiti is tied with Iran on the Corruption Index with a score of 2.4 and a ranking of 134 out of 178.<sup>134</sup> The 2010 Human Rights report cites “allegations of extrajudicial killings by Haitian National Police (HNP) officers” and “severe corruption in all branches of government.”<sup>135</sup> The report further notes that the November 2010 election prevented many from exercising their right to change their government and was plagued by fraud.<sup>136</sup> Haitian law imposes criminal penalties for official corruption; however, “officials often engaged in corrupt practices with impunity.”<sup>137</sup> This endemic corruption plagues all levels and branches of the Haitian government.<sup>138</sup> With a government permeated with corruption, it is surprising to find that of the 663 asylum applicants from Haiti only 167 of the applicants were granted asylum.<sup>139</sup> Approximately 75% of the applicants from Haiti were denied, while only 36% of applicants from Iran were denied.<sup>140</sup>

An even greater disparity in acceptance rates can be found for those applicants from Guatemala. In 2010, 1,170 applications were decided, with a denial rate of nearly eighty-six percent.<sup>141</sup> Unlike Haiti, Guatemala is ranked just barely in the bottom half of nations in the Corruption Index with a score of 3.2.<sup>142</sup> Although the corruption in Guatemala does not appear to reach the depths of that in Haiti, the larger disparity in rejection is alarming when considered alongside the Human Rights Report for 2010, which lists human rights abuses as including the following: “the government’s failure to investigate and punish unlawful killings commit-

---

Immigration Review Office of Planning, Analysis, and Technology, *available* <http://www.justice.gov/eoir/efoia/FY08AsyStats.pdf>

134. See Transparency International, Annual Report 2010, *supra* note 4.

135. 2010 Human Rights Reports: Haiti, Bureau of Democracy, Human Rights, and Labor, (April 10, 2013), *available* at <http://www.state.gov/j/drl/rls/hrrpt/2010/wha/154509.htm>.

136. *Id.*

137. *Id.* at 16.

138. *Id.*

139. FY 2010 Asylum Statistics, *supra* note 131.

140. Compare 2010 Human Rights Report: Haiti, *supra* note 134 with 2010 Human Rights Report: Iran, Bureau of Democracy, Human Rights, and Labor, (April 10, 2013), *available* at <http://www.state.gov/j/drl/rls/hrrpt/2010/nea/154461.htm> (Although one may argue that Iran suffers from numerous other human rights abuses in comparison to Haiti, the significant additional abuses are found in the treatment of Jews, women activists, and the freedom of press. Iran also restricts civil liberties including the freedom of religion. It may also be noted that the language used in describing Iran, a foe of the United States, is much stronger than that describing Haiti, a neighbor and friend of the United States.).

141. FY 2010 Asylum Statistics, *supra* note 131.

142. See Transparency International, Annual Report 2010, *supra* note 4.

## 108 INTER-AMERICAN LAW REVIEW [Vol. 44:1]

ted by members of the security forces. . . corruption and substantial inadequacies in the police and judicial sectors; [and] police involvement in serious crimes, including unlawful killings, drug trafficking, and extortion.”<sup>143</sup>

Police killings become even more troublesome because “[c]orruption, intimidation, and ineffectiveness within the police and other institutions prevented adequate investigation of many [unlawful] killings [by police] as well as the arrest and successful prosecution of perpetrators.”<sup>144</sup> Police officers have been accused of stopping buses and cars in order to bribe, steal, kidnap, assault, rape, and threaten to bring false drug charges to extort money or sexual favors from passengers.<sup>145</sup> When allegations were brought against police officers, the officers were often transferred instead of investigated.<sup>146</sup> The Office of Professional Responsibility for the police investigated 787 police officers; half of the police officers investigated were exonerated, none were terminated as a result of the proceedings, and the remaining 348 cases resulted in few going to trial.<sup>147</sup> Further corruption can be found in the judiciary preventing fair or timely trials.<sup>148</sup>

Nicaraguan asylum statistics are also troubling—of 121 applications decided, 106 were denied.<sup>149</sup> Nicaragua, with a score of 2.5 and a ranking of 127th is among the most corrupt nations in the Americas according to the Corruption Index.<sup>150</sup> The State Department reports that there are occasionally unlawful killings by security forces and police, some of which are investigated and punished.<sup>151</sup> Widespread corruption is also found in the Supreme Judicial Council, the Supreme Electoral Council, and other government organs.<sup>152</sup> The report refers to an incident on March 17, 2010 where police assaulted two members of a resistance group

---

143. *2010 Human Rights Reports: Guatemala*, BUREAU OF DEMOCRACY, HUMAN RIGHTS, AND LABOR, (April 8, 2011), available at <http://www.state.gov/g/drl/rls/hrrpt/2010/wha/154507.htm> [hereinafter *Guatemala*] (indicating that Guatemala is ranked 91st out of 178 nations).

144. *Id.*

145. *Id.* at 8.

146. *Id.*

147. *See id.* at 9.

148. *See id.* at 10.

149. FY 2010 Asylum Statistics, *supra* note 131.

150. *See* Transparency International, Annual Report 2010, *supra* note 4.

151. *2010 Human Rights Reports: Nicaragua*, BUREAU OF DEMOCRACY, HUMAN RIGHTS, AND LABOR, 1, 9 (April 8, 2011), available at <http://www.state.gov/g/drl/rls/hrrpt/2010/wha/154513.htm> [hereinafter *Nicaragua*]

152. *Id.* (“The judiciary remains susceptible to corruption and politicization and did not function independently.”).

## 2012] STANDING UP AGAINST CORRUPTION 109

distributing flyers against government corruption.<sup>153</sup> More detailed examples of corruption in the report include executive branch officials dispensing funds outside of the normal budgetary process and the use of a Zero-Hunger program to give more money to areas containing a higher population of the majority party affiliated residents than to the poorest areas.<sup>154</sup> The judicial branch's independence and susceptibility to corruption worsened when the governing Sandinista party replaced seven Supreme Court justices in time to ensure that they would not stop the president from running for reelection, despite the questionable constitutionality of his reelection.<sup>155</sup>

Honduras is more corrupt than Nicaragua, but has a slightly better asylum approval rate of fifteen percent.<sup>156</sup> Human rights problems in Honduras include "unlawful killings by police and government agents. . . corruption and impunity within the security forces. . . politicization, corruption, and institutional weakness of the judiciary; [and] corruption in the legislative and executive branches."<sup>157</sup> The State Department notes that corruption and impunity are serious problems, with ninety-five ongoing investigations against police officers underway.<sup>158</sup> Although the Honduran government has instituted new disclosure laws and anti-corruption measures, the widespread public perception is that it is not working to combat high-level corruption.<sup>159</sup> Honduras has been somewhat successful in fighting corruption, exhibited by the recent news that 176 Honduran National Police were arrested on corruption charges.<sup>160</sup>

Mexico, perhaps surprisingly, ranks 98th on the Corruption Index with a score of 3.1.<sup>161</sup> Eighty-eight percent of Mexican asylum applications were denied.<sup>162</sup> The State Department notes problems such as "[c]orruption, inefficiency, and lack of trans-

---

153. *Id.* at 4. Additionally, there were no developments in the case and none were expected to develop.

154. *Id.* at 19-20.

155. *Id.* at 20.

156. FY 2010 Asylum Statistics, *supra* note 131.

157. 2010 *Human Rights Reports: Honduras*, BUREAU OF DEMOCRACY, HUMAN RIGHTS, AND LABOR, 1,1 (April 8, 2011), available at <http://www.state.gov/g/drl/rls/hrrpt/2010/wha/154510.htm>.

158. *See id.* at 14.

159. *Id.* at 26.

160. *Honduras arrests 176 police in corruption purge*, BBC NEWS (Nov. 3, 2011), <http://www.bbc.co.uk/news/world-latin-america-15586060>.

161. *See* Transparency International, Annual Report 2010, *supra* note 4.

162. FY 2010 Asylum Statistics, *supra* note 131.

parency that engendered impunity within the judicial system.”<sup>163</sup> In addition, there were several reports of forced disappearances by the army and police.<sup>164</sup> Journalists practice self-censorship when covering corrupt public officials and crime.<sup>165</sup> They acknowledge that investigative journalism poses a threat to them and their families.<sup>166</sup> Mexican President Felipe Calderón spoke of corruption being a serious problem in the police forces.<sup>167</sup> Police have been involved in kidnapping, extortion, and in providing protection for, or acting directly on behalf of, organized crime and drug traffickers.<sup>168</sup> In 2009, 3,600 of the 34,500 Federal Police officers were dismissed for failing to perform their duties or engaging in criminal misconduct, and 1,200 more officers were still under investigation.<sup>169</sup> The Mexican police, however, are not the only corrupt institution as corruption remains a problem at all levels of government. Acts of corruption include bribery for routine services or in place of fines, and overpaying for goods and services in order to give money to elected officials and political parties.<sup>170</sup> Mayors, congressmen and migration officers are just a few of the officials charged with corruption in 2010.<sup>171</sup>

*D. Impact on the Eleventh Circuit Decision? Or Jurisdiction?*

The Eleventh Circuit is one of the few circuit courts that has not yet expressly found whistleblowing and opposition to state corruption to be a political opinion for asylum purposes. In addition, it is home to many of the Immigration Judges with the highest denial rates for asylum cases. The Immigration Courts in the Eleventh Circuit had a higher denial rate from fiscal year 2008 to fiscal year 2010 than the nationwide average denial rates, which

---

163. *2010 Human Rights Reports: Mexico*, BUREAU OF DEMOCRACY, HUMAN RIGHTS, AND LABOR, 1,1 (April 8, 2011), available at <http://www.state.gov/g/drl/rls/hrrpt/2010/wha/154512.htm>.

164. *Id.* at 4.

165. *Id.* at 18.

166. *Id.*

167. *Id.* at 22 (“President Calderón remarked in speeches in March and October [of 2010] that corruption was a serious problem in the police forces and a primary reason for the use of the military in the domestic counternarcotics fight.”).

168. *Id.* at 5.

169. *2010 Human Rights Reports: Mexico*, BUREAU OF DEMOCRACY, HUMAN RIGHTS, AND LABOR, 1,24 (April 8, 2011), available at <http://www.state.gov/g/drl/rls/hrrpt/2010/wha/154512.htm>.

170. *Id.* at 22.

171. *Id.* at 22-23.

## 2012]     STANDING UP AGAINST CORRUPTION     111

ranged in the mid-to-lower fifties.<sup>172</sup> Atlanta's judges had an average denial rate of 79.2 percent; Orlando's denial rate was slightly lower with 70.8 percent and Miami's two Immigration courts had 75.6 percent and 93.8 percent denial rates, respectively.<sup>173</sup> More time, research, and statistical data would need to be compiled to determine if the denial rates will decrease for the nations of the Western Hemisphere, with many of those immigrants arriving and living in the jurisdiction of the Eleventh Circuit.

## V. CONCLUSION

*"Lack of political will and rampant impunity facilitated government corruption."*

—U.S. State Department<sup>174</sup>

Corruption remains a serious problem in nations of the Western Hemisphere. However, for a nation that is dedicated, through treaties and speeches, to helping these nations combat corruption, one must wonder how the United States plans to aid the political morale in its neighboring countries where both the corruption and U.S. asylum denial rates are very high.

As those seeking asylum in the United States wait to find out if the *Matter of N-M-* will give them the protection they need after standing up against corruption in their home nations, former Secretary of State Hillary Clinton reminded the U.S. of the power that a few individuals can have. She stated the following on International Anticorruption Day:

Today—and every day—we celebrate the work of activists, businesses, and government officials who tirelessly fight to end corruption and promote open and transparent government. From a fruit vendor in Tunisia who inspired a popular uprising, to the daily work of activists from Latin America to Asia, people around the world are showing that they will not accept the corruption that prevents too many from living with dignity and having opportunities to realize their potential. . . . The events of this past year have reminded us of the difference that ordinary citizens can make. We must continue to draw from their inspiration and

---

172. *Asylum Denial Rates in Immigration Courts*, TRACIMMIGRATION, available at <http://trac.syr.edu/immigration/reports/240/include/asyltimedenG.html>. (Including data for FY 2010 only covered to June 21, 2010).

173. *Judge-by-Judge Asylum Decisions in Immigration Courts Before and After the Attorney General's Directive*, TRACIMMIGRATION, available at <http://trac.syr.edu/immigration/reports/240/include/denialrates.html>.

174. *Guatemala*, *supra* note 143, at 18.



## 112 INTER-AMERICAN LAW REVIEW [Vol. 44:1]

stand up for the rights of those who don't have the opportunity to realize her or his potential. We must strengthen our own commitment as we fight corruption around the world.<sup>175</sup>

Perhaps those courts and judges involved in the asylum process were listening. A few people through small and ordinary acts can bring change. The United States has found hope in this process in the Middle East. In time these small acts may affect change in the nations of the Western Hemisphere. The people to whom Secretary of State Clinton was committed may very well one day need protection when leaving their home nations. They should be assured that their efforts will not be viewed as "nonpolitical" and returned to face persecution in their home countries. They are affecting changes in their governments, one of the noblest political acts a citizen can take.

---

175. Secretary of State Hilary Rodham Clinton, *International Anticorruption Day Press Statement*, U.S. DEP'T OF STATE (December 9, 2011), available at <http://www.state.gov/secretary/rm/2011/12/178568.htm>.